IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2800 OF 2007

G. Chem India ..Applicant

Vs.

M/s. Rajeshwari Surgicals
Dressing and anr. ..Respondents

Mr. Indrajeet Joshi for applicant.
Mr. A.S. Shitole, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 27, 2007.

P.C.:

1. Heard Mr. Joshi the learned counsel for the applicant-company which has been impleaded as an accused in S.C.C. No.821 of 2003 presently pending before the learned Chief Judicial Magistrate at Sangali for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. It appears that during the cross-examination of the complainant on the affidavit-in-chief filed, the learned Chief Judicial Magistrate did not allow certain applications and aggrieved thereby the applicant-accused filed

Criminal Misc. Application No. 465 of 2007 before the learned Sessions Judge for transfer of the complaint under Section 408 of Cr.P.C. The said application came to be rejected on 31/7/2007 by the learned Sessions Judge and hence this application purportedly under Section 482 of Cr.P.C.

2. The learned Additional Sessions Judge held that in Sangali District six Special Courts have been specifically created to deal with the matters under Section 138 of the Negotiable Instruments Act, 1881 and two such courts are located at Sangali. The accused-applicant was facing trial before one of the two Special Courts at Sangali. Some questions which were asked by the accused to the complainant's witness were not allowed to be asked by the learned Presiding Officer and, therefore, one cannot jump to the conclusion that the learned Chief Judicial Magistrate would not consider the case on merits and such reasons cannot be the basis for transferring cases, more so when the case was at the stage of recording evidence and thus the trial had commenced. Even otherwise if the accused has any defence he is not prevented from

stepping in the witness box or adducing any other oral/documentary evidence to rebut the presumption and prove that either the cheque was not signed by him or that there was no transaction so as to make out a case of legally enforceable debt or any other financial liability.

3. The application is rejected summarily.

(B.H. Marlapalle,J.)